

HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2)(b))

Description of the Case.

Criminal Misc. Application No. 57 of 2004

Mohd. Hussain
S/o Sri Basheer Ahmad & others Applicants

Versus

State of Uttaranchal & another ... Opp. Parties

Approved for reporting. ✓

Not approved for reporting.

Date of Decision 17th September, 2005.

Initial of Judge.

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

Criminal Misc. Application No. 57 of 2004

1. Mohd. Hussain S/o Sri Basheer Ahmad
 2. Smt. Raheesa Khatoon W/o Sri Mohd. Hussain
 3. Mohd. Mobeen S/o Kari Mohd. Hussain
 4. Gijala Arfa D/o Mohd. Hussain
R/o Kulhapur P.S. Tanda Afzal
Tahsil Thakurdwara
District Moradabad (U.P.)
 5. Dlishad Ahmad S/o Haji Kamaruddin
R/o Village Foadpur
Tehsil & P.S. Thakurdwara
District Moradabad (U.P.)
- ... Applicants

Versus

1. State of Uttaranchal through
Home Secretary, Dehradun
 2. Mohd. Umar S/o Sri Abdul Majeed
R/o Village Raipur
P.S. Jaspur
District Udham Singh Nagar
- ... Opp. Parties

Sri Dharamveer Sharma, learned Senior Advocate assisted by Sri B.S. Parihar learned counsel for the petitioners/applicants.

Sri Rakesh Thapliyal, learned counsel for the respondent no. 2.

Hon'ble B.C. Kandpal, J

1. This petition under Section 482 Cr.P.C. has been filed by the applicants for quashing the chargesheet dated 30.11.2003 submitted in Case Crime No. 505 of 2003 under Sections 498-A, 420, 506, 120-B 323 I.P.C. and 3/4 Dowry Prohibition Act. The petitioners have also prayed for setting aside the summoning order dated 13.01.2004 passed by Civil Judge (J.D.)/Judicial Magistrate, Kashipur, District Udham Singh Nagar in Criminal Case No. 44 of 2004 State Vs Mohd. Hussain & others.

2. Brief facts giving rise to this petition are that the opposite party No. 2, namely, Mohd, Umar lodged a First Information Report against the petitioners under Section 498-A, 420, 506, 120-B, 323 and

3/4 Dowry Prohibition Act. The police investigated the matter and submitted the chargesheet against the petitioners on 30.11.2003.

3. Learned Magistrate after having perused the chargesheet took the cognizance and issued the summons to the petitioners vide order dated 13.01.2004.

4. Feeling aggrieved by the aforesaid impugned order the petitioners have filed this petition for setting aside the impugned summoning order as well as for quashing the chargesheet submitted against the petitioners before the court below.

5. The opposite party No. 2 has filed the counter affidavit in this case and thereafter the petitioners have filed the rejoinder affidavit.

6. I have heard Sri Dharamveer Sharma, learned Senior Advocate assisted by Sri B.S. Parihar, learned counsel for the petitioners as well as Sri Rakesh Thapliyal, learned counsel for the respondent No. 2 and perused the record.

7. Learned counsel for the petitioners has firstly argued that the impugned summoning order dated 13.01.2004 passed by the Judicial Magistrate, Kashipur, District Udham Singh Nagar is not a speaking order. Hence, the summoning of the petitioners is bad in the eye of law.

8. I do not find any force in this argument. The summoning order does not require a meticulous consideration of the evidence. The court in case, is satisfied from the papers produced before it and comes to the conclusion that there is a prima-facie case to proceed against the accused then it can take the cognizance and accordingly summon the accused persons. The chargesheet which has been filed against the accused persons clearly discloses the offence and shows that the case

against the petitioners is made out prima-facie. The Investigating Agency had produced all the relevant documents before the Magistrate at the time of taking the cognizance in the matter and the Magistrate after being satisfied issued the summons to the petitioners.

9. Learned counsel for the petitioner has further argued that the prima facie case is not made out against the petitioners hence the summoning order is bad and the chargesheet dated 13.11.2003 submitted by the Investigating Agency deserves to be quashed.

10. I again do not find any force in this argument. I am not suppose to assume the role of a trial court and embark upon an enquiry as to the reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence. On consideration of the allegations made in the First Information Report, it appears that the ingredients of the offences are disclosed.

11. The next contention raised by the learned counsel for the petitioners is that the allegations made by the opposite party No. 2 against the petitioners are result of malafidies.

12. This argument also is of no avail. The Hon'ble Apex Court in **2005 Supreme Court Cases (Criminal) 283, Zandu Pharmaceutical Works Ltd. Vs Mohd. Sharaful Haque** has held that "*when an information is lodged at police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and the evidence led in court, which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.*"

13. The inherent power under Section 482 Cr.P.C. is to be exercised by this Court only to prevent the abuse of process of any court or otherwise to secure the end of justice and this power is not to be exercised to stifle a legitimate prosecution. I refrain myself from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been produced before the court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material.

14. I do not find any special feature in this case to say that it is not expedient and not in the interest of justice to permit the prosecution to continue.

15. I do not find any ground on which I come to the conclusion that in this case flagrant injustice is going to be caused to the petitioners. There is no scope to exercise the inherent jurisdiction under Section 482 Cr.P.C. in the present matter.

16. Accordingly, the petition under Section 482 Cr.P.C. is dismissed. Stay order dated 17.02.2004 stands vacated.

(B.C. Kandpal, J)

17th September, 2005
ASWAL